

**Board for Judicial Administration
Meeting Minutes**

**November 20, 2009
AOC SeaTac Office
SeaTac, Washington**

Members Present: Judge Michael Lambo, Member Chair; Judge Rebecca Baker; Judge Stephen Brown; Judge Ronald Culpepper; Judge Sara Derr; Judge Susan Dubuisson; Judge Tari Eitzen; Judge Deborah Fleck; Mr. Jeff Hall; Ms. Paula Littlewood; Justice Barbara Madsen; Mr. Sal Mungia; Judge Jack Nevin; Judge Glenn Phillips; Judge Christine Quinn-Brintnall; Judge Stephen Warning; and Judge Christopher Wickham

Guests Present: Mr. M. Wayne Blair, Ms. Jeri Cusimano, Judge David Larson, Ms. Marti Maxwell, Ms. Jean McElroy, Ms. Barb Miner, Ms. Catherine Moore, and Judge Ann Schindler

Staff Present: Ms. Ashley DeMoss, Ms. Beth Flynn, Mr. Dirk Marler, Ms. Mellani McAleenan, Dr. Carl McCurley, Mr. Rick Neidhardt, and Mr. Chris Ruhl

The meeting was called to order by Judge Lambo.

October 16, 2009 Meeting Minutes

It was moved by Judge Dubuisson and seconded by Judge Baker to approve the minutes of the October 16, 2009 meeting. The motion carried.

Proposed Revision to GR 29(f)(5)

Judge Larson, from Federal Way Municipal Court, reported that he was recently faced with the decision of how to respond to a workplace complaint regarding the presiding judge in his court. He had three choices as acting presiding judge in the presiding judge's absence: do nothing and potentially violate Canon 3(c)(1) and GR 29 requirements to properly manage the workplace, hire an outside investigator and subject the city to further litigation of the type already pending from a previous outside investigation of the same judge, or investigate the claim himself as acting presiding judge. He decided to investigate and write a detailed report. He believes that even though it was his best choice under the circumstances that it does create public confidence issues when one judge investigates allegations against another judge in the same court.

Judge Larson drafted a proposed revision to GR 29(f)(5) which he believes addresses the issues he encountered during the situation in Federal Way Municipal Court. His proposal is intended to provide guidance to all three branches of government on how to address workplace environment claims in courts and to keep such investigations within the judicial branch.

After discussion, it was decided that Judges Fleck, Derr and Larson will work with Mr. Hall and Ms. McAleenan to draft a charter which will be reviewed at a future meeting.

BJA Legislative Agenda

Interpreter Oath Legislation: Ms. McAleenan reported that the Code Reviser's version of the interpreter oath legislation was included in the meeting materials. The language incorporates the Oregon statute into the Washington legislation. She worked with Ms. Katrin Johnson, AOC staff to the Interpreter Commission, on the language, and Ms. Johnson vetted it through some attorneys who are members of the Interpreter Commission.

Judge Quinn-Brintnall explained the reasoning of the Court of Appeals in *State v. Flores*, and the need for the bill was discussed.

There was discussion about the interpreter identification badges and it was suggested that interpreters could go on record stating their certification number or something similar. It was suggested that this issue be held until the December meeting but Ms. McAleenan explained that she needed a decision from the BJA if they wanted to move forward so she could line up bill sponsors during the December Legislative Committee Days. If the bill is not filed at the beginning of the session, it will not get a hearing.

Judge Dubuisson moved and Judge Nevin seconded that the BJA approve the language in the Code Reviser's version of the bill in order to move forward and seek bill sponsors. The motion carried with Judges Quinn-Brintnall, Culpepper and Eitzen opposing.

Judicial Election Legislation: Ms. McAleenan reported that a copy of the 2006 legislation was included in the meeting materials. She stated that she is not getting much positive response on this from legislators. The 2006 version of the legislation may need revision or updating. Given the importance of the issue, it is important to discuss whether this issue should be raised if there is not much chance of it passing. Ms. McAleenan asked the BJA how she should proceed on this issue.

Judge Derr moved and Judge Nevin seconded that the BJA support this legislation. The motion carried.

2010 BJA Meeting Schedule

The proposed 2010 BJA meeting schedule was included in the meeting materials.

It was moved by Judge Phillips and seconded by Judge Dubuisson to approve the 2010 BJA meeting schedule. The motion carried.

Public Records Act

Mr. Hall stated that within about 48 hours of the Koenig ruling, he was contacted by Senator Adam Kline who had been contacted by Mr. Toby Nixon from the Washington Coalition for Open Government regarding legislation during the upcoming legislative session to address

the applicability of the Public Records Act (PRA) to the courts. This issue will require careful thought and consideration.

Mr. Neidhardt presented background information as to the current state of the law and the changes that would result if the judiciary were to be subject to the PRA. New PRA exemptions specific to judicial documents would need to be considered. The Administrative Office of the Courts (AOC) recommends at least three areas for exemptions: 1) case files (central to a court's role in deciding cases); 2) other documents related to judicial decision-making in cases such as decision-making notes and drafts; and 3) court rules. Further consideration is needed for these and other potential exemptions.

Mr. Hall commented that Chief Justice Gerry Alexander referred this issue to the Supreme Court Rules Committee and in subsequent discussions with Justice Charles Johnson, he decided to ask the BJA to consider this issue.

It was suggested that a BJA work group be established to look into this issue. The turnaround time is going to be very quick because the work group's findings will need to be presented at the January BJA meeting.

It was moved by Fleck and seconded by Judge Baker to establish a BJA Public Records Act Work Group. The motion carried.

Mr. Hall and Ms. McAleenan will talk with the associations to determine their representatives on the work group.

Washington State Center for Court Research Report

Dr. McCurley gave a brief overview of the history of the Washington State Center for Court Research (WSCCR). The WSCCR was established by Supreme Court order in 2004. The WSCCR's role is to improve understanding of the courts, help guide judicial policy, and improve the functioning of our judicial system. The WSCCR has a broad constituency and is accountable to everyone: the BJA, every court level, and court administrators. The WSCCR Advisory Board wants to get on the BJA's radar and let BJA members know they are available if needed.

The objective of the judicial needs estimation is to predict the number of judges needed for the expected volume and mix of cases for any court. The WSCCR uses a rational basis for making a prediction for how many judges will be needed for the caseload in a particular case. Washington State is the only state that employs the current objective caseload method. One advantage of this method is that the results can be refreshed each year using the latest data.

There were a number of questions regarding what data is tracked and how the data could be broken down. Dr. McCurley responded that they are limited by the data that is collected by the courts and if court associations would like to see a particular type of data for their court

levels or changes to the model, they should contact Dr. McCurley or their court association representative on the WSCCR Advisory Committee.

Suspension of Judge During Commission on Judicial Conduct Investigation

Judge Lambo stated that this agenda item relates to whether the BJA should look at if there is potential to give authority to suspend a judge during a complaint. Judge Lambo would like to table this until a later meeting.

WSBA Proposed Changes to Judicial Status

Mr. Mungia reported that the Washington State Bar Association (WSBA) Bylaws Review Committee is reviewing all of their bylaws. One of the revisions they are proposing is to the Membership section. They are considering changing the definition of “Judicial member” and whether Judicial members should be assessed license fees and/or assessments. They are also considering expanding the membership rights of Judicial members.

This proposed bylaws change was scheduled to be voted on at the December WSBA Board of Governors (BOG) meeting but now that they are receiving comments, the Board will likely vote on this matter at its January meeting.

Ms. McElroy added that under the proposal Judicial members would not be required to report continuing education with the WSBA (CLEs) and AOC (CJEs), the WSBA would accept a certification letter/list from the AOC stating the judge has met the CJE requirements.

The license fee would be established by the WSBA or the Supreme Court. The Supreme Court indicated to the WSBA that they may have a role in establishing the fee. Judge Brown thanked the WSBA for taking into consideration the concerns brought up by the District and Municipal Court Judges’ Association (DMCJA). The proposed bylaws revisions are a great concern to their membership—especially to part-time judges.

Criminal Justice Summit

Mr. Hall has been attending Criminal Justice Summit meetings for the past year. The purpose of the Summit is to come up with solutions to the budget issues that the criminal justice system is facing. It is sort of like a think tank but with no real authority to move forward with ideas.

During the last meeting, Mr. Denis Tracy, Whitman County Prosecutor, took the DWLS 3 issue and put it into legislation. The Criminal Justice Summit body has no standing in the Legislature. Mr. Hall brought this to the BJA hoping that the trial court associations will take this back to their groups and start reviewing it. If all the bodies take a position of support on this bill during the session, it will most likely pass.

The bill removes license suspension as a coercive collections tool. It does not decriminalize it. It does keep in place the prohibition to renew a license if traffic infraction penalties are outstanding. It is good public policy and relates to the administration of justice.

The DMCJA is also proposing a rule on bail forfeitures which are primarily used as a disposition for DWLS 3. There is added incentive for this bill to pass if a rule change is approved because the rule will result in caseload increases in some courts but this bill will alleviate that.

Washington State Bar Association

Mr. Mungia reported that all stakeholders recently met regarding the WSBA legislative agenda.

Mr. Stan Bastian will chair the Task Force on Escalating Litigation Costs. The WSBA will also form a task force in the next few months to address electronic filings. They would like to see more uniformity across the state.

Ms. Littlewood stated the WSBA had a great BOG meeting in Pullman. Their next meeting will be held in Tacoma and they will discuss a Uniform Bar Exam proposal. All three law school deans will be in attendance for the discussion.

Reports from the Courts

Supreme Court: Justice Madsen reported that the Supreme Court recently held court at Peninsula College. They have been receiving feedback regarding how much people enjoyed watching the interaction between the court and college students on TVW. They also had a chance to meet with the Clallam County Bar while in Port Angeles and had dinner with the college board and some community leaders.

Mr. Hall and Mr. Ramsey Radwan met with the Supreme Court Budget Committee yesterday and they are looking at the possibility of budget reductions in the one to five percent range depending on what action the Legislature takes during the session.

The Supreme Court has been undertaking an effort to look at long-range planning and have met about four times so far.

Court of Appeals: Judge Schindler stated that the Court of Appeals continues to grapple with the consequences of the last budget reductions, which resulted in a number of layoffs and Division III requiring furloughs. The Courts of Appeals has significant concerns with the current budget deficit and how they can take further cuts.

Judge Susan Agid and Judge John Schultheis will retire in December. Division I has asked the Governor not to appoint a new judge until March and Division III is asking the Governor not to appoint until late spring in order to meet the current budget cuts.

Superior Courts: Judge Eitzen congratulated Justice Madsen on her election as Chief Justice. The Superior Court Judges' Association (SCJA) Legislative Committee is meeting in Seattle later today and will work with Secretary of Corrections Eldon Vail on DOSA bed usage, deportation, and the Evidence Based Community Custody Proposal. The SCJA Board meets tomorrow. The SCJA has been watching Pierce County closely and Judge Eitzen appreciates the collegiality in terms of how people are pulling together and watching this situation.

The November Bar News focused to Justice in Jeopardy. Judge Fleck thanked the WSBA, Ms. Littlewood and Mr. Mungia, and their wonderful editor for the great job.

Courts of Limited Jurisdiction: Judge Brown reported that during the last Board meeting, the DMCJA voted to continue its support for a proposal to have all judges elected. Mr. Don Horowitz gave a presentation regarding broadband technology (Washington State Justice Net) and the DMCJA voted to support that program. They also voted to approve the collection of data for therapeutic courts and approved a survey to limited jurisdiction courts regarding budget reductions.

Association Reports

County Clerks: Ms. Miner reported that the Clerks are creating their annual LFO report to the Legislature. They have had double-digit increases in the amount of money that is collected since taking over collections in 2003 but due to the economy, they do not expect that from here on out. The Clerks participated in the Board for Court Education (BCE) retreat.

Superior Court Administrators: Ms. Maxwell stated that the Superior Court Administrators also participated in the BCE retreat. They especially enjoyed seeing the new Adobe software. They are still waiting to hear back from all their courts on where they stand with budgets. Some courts that thought they were stable were hit.

Some of their emerging issues are:

- The Public Records Act. It is great to see there will be some activity around that.
- The Civil Rights Act Title 6 issues that are coming up in departments/agencies in the executive branch. They will explore that issue more to determine if it is an anomaly or a trend.
- They are holding two rounds of trainings starting next month and one issue will be reducing stress and another will focus on BOXI training.
- CMS concerns.
- Code of Conduct for judicial employees. The state does not have one and some jurisdictions adopt them locally. It would be helpful to have a uniform code of conduct.

District and Municipal Court Administrators: They reported at the last BJA meeting that they had to cancel their regional training because of low attendance. During their meeting

last week that was a big topic of discussion. They will survey their members about the cause and will try to address it. The Superior Court Administrators invited the District and Municipal Court Management Association (DMCMA) to their regional seminars.

Ms. Cusimano's court is a pilot site for the vehicle related violations data exchange. Earlier this week, they electronically transferred their parking data into the Judicial Information System (JIS) and it went well. Next on the horizon is communication to courts on what they need to do to get ready for the data exchange.

Administrative Office of the Courts

Mr. Hall reported that the AOC is gearing up for the legislative session and working on possible budget scenarios.

The Interpreter Program recently held oral exams and they will be able to certify a candidate in Vietnamese and two candidates in Russian.

Skagit County District Court will likely receive a qualified opinion on their audit related to the JIS accounting system and the AOC worked with the court and the auditor regarding the issue. Mr. Radwan will forward information regarding the issue to courts of limited jurisdiction for their information.